

STATE OF MICHIGAN  
COURT OF APPEALS

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LEO RHONE, JR,

Plaintiff-Appellant,

v

CITY OF DETROIT and DETROIT  
DEPARTMENT OF PUBLIC WORKS,

Defendants-Appellees.

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UNPUBLISHED  
February 26, 2009

No. 283558  
Wayne Circuit Court  
LC No. 06-612025-NI

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendants' motion for summary disposition on the basis of governmental immunity, MCL 2.116(C)(7). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff suffered injuries when the motorcycle he was driving slid and crashed after encountering what he alleged was hydraulic oil that had been covered with gravel. He brought suit, alleging negligence, gross negligence, and vicarious liability. The complaint alleged that a truck owned by defendants leaked several gallons of hydraulic oil, requiring it to be towed, and that city employees merely dumped rocks on the spill instead of removing it. When plaintiff encountered the spill "hours later," it made him lose control of his motorcycle and resulted in his injuries.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Similarly, a determination of the applicability of the highway exception is a question of law subject to de novo consideration on appeal. *Stevenson v Detroit*, 264 Mich App 37, 40-41; 689 NW2d 239 (2004).

The highway exception to governmental immunity is set forth in MCL 691.1402(1), which provides in part:

[E]ach governmental agency having jurisdiction over any highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to

his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. . . . The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks or any other installation outside of the improved portion of the highway designed for vehicular travel.

An imperfection in a highway is not a defect giving rise to liability unless it renders the highway unsafe for public travel. *Wilson v Alpena County Rd Comm*, 474 Mich 161, 167-168; 713 NW2d 717 (2006).

Another limitation on the highway exception is set forth in MCL 691.1403:

No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place.

In addition, an injured person must timely notify the governmental agency having jurisdiction over the roadway of the occurrence of the injury and the nature of the defect. MCL 691.1404; *Rowland v Washtenaw Cty Rd Comm*, 477 Mich 197, 200, 203-204, 219; 731 NW2d 41 (2007).

The circuit court did not err in granting defendants' motion for summary disposition. Although plaintiff asserts that defendants refused to reveal the names of the employees responsible, and the statute of limitations expired on those individuals before they could be identified and served, defendants responded to requests to produce and answered interrogatories by explaining that no record existed of a truck breaking down or spilling oil within a mile of the site of the accident for a period of two weeks before to two weeks after the accident. Nor did a record exist of any complaints filed regarding the condition of the road or of plaintiff's accident. Thus, defendants could not give plaintiff any help in ascertaining who was responsible for the spill or the attempted clean-up. Further discovery revealed that plaintiff's witnesses would testify that the oil spill occurred anywhere from two to four weeks before the accident, but there are no facts in the record showing that defendants were responsible for the spilled oil or that defendants' employees dumped gravel on the spill. Defendants, in contrast, have provided at least in their answers statements that no record exists of either event. In addition, plaintiff had to

show that defendants had actual or constructive notice of the condition and that he notified defendants of the injury and defect as required by MCL 691.1404. This he failed to do.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Kirsten Frank Kelly  
/s/ Jane M. Beckering